

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

Respondent.

OAH 15 (Rev. 6/76)

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
STATE OF CALIFORNIA

| | | |
|---------------------------------|---|------------|
| In the Matter of the Accusation |) | |
| Against: |) | |
| |) | No. D-2753 |
| |) | |
| |) | |
| TERRY E. LILLY, JR., M.D. |) | L-24526 |
| 4902 Irvine Center Drive |) | |
| Irvine, California 92714 |) | |
| |) | |
| Physician's and Surgeon's |) | |
| Certificate No. C 12769 |) | |
| |) | |
| |) | |
| |) | |
| Respondent. |) | |
| |) | |

PROPOSED DECISION

This matter came on regularly for hearing before W. F. Byrnes, Administrative Law Judge of the Office of Administrative Hearings, at Westminster, California, on November 15, 16, 17, and 18, 1982. Complainant was represented by Leslie Anne Lederman, Deputy Attorney General. Respondent appeared personally and was represented by Henry Lewin, Attorney at Law. Oral and documentary evidence was received and the matter was submitted. Subsequently on November 23, 1982, the Administrative Law Judge received a Request for Official Notice filed and served by complainant, and was marked Exhibit 5 for identification. Respondent made no request within a reasonable time to refute the matters contained therein, and the matter was again submitted. The Administrative Law Judge finds the following facts:

I

Robert G. Rowland made the Accusation in his official capacity as the Executive Officer of the Board of Medical Quality Assurance.

II

On or about May 25, 1950, respondent Terry E. Lilly, Jr., M.D. (hereinafter "respondent") was issued Physician's and Surgeon's Certificate No. C 12769 by the Board. Said

certificate is currently, and was at all times mentioned herein, in full force and effect.

III

A. D█████ B█████, since deceased, was a thirty year old female suffering from many diseases including multiple sclerosis, and was respondent's patient at Palm Grove Convalescent Hospital in Garden Grove. Late in the evening of May 26, 1978, respondent was telephoned by a nurse there who told him that D█████ B█████ appeared seriously ill, and respondent ordered the patient transported by ambulance to Mercy General Hospital in Santa Ana, where she was seen by Dr. Grossman in the emergency room. Dr. Grossman informed respondent by telephone of the patient's condition; respondent wished her admitted and, on Dr. Grossman's recommendation, he requested that she be admitted to CCU by Dr. Khurana, whom respondent did not know but who was then present in the hospital. Respondent then proceeded to the hospital that night, saw and examined the patient in CCU, so charted, and ordered medications. On May 27, 1978, Dr. Khurana telephoned in an order, which was charted by a nurse, to transfer the patient "to Dr. Terry Lilly's service." Respondent again saw the patient on May 27, 1978, after the above order was charted.

B. The hospital admissions office, as a courtesy to respondent, had long provided him each morning with a list of the names and locations of all of his patients in the facility, upon which he routinely relied in making his rounds. After May 27, 1978, the hospital records continued for several days to show Dr. Khurana as D█████ B█████'s treating physician, with the result that her name was omitted from respondent's patient list. Respondent inexplicably failed to recall the patient, and he did not see her for the next three days, although he was in the hospital each day seeing the patients on his list.

C. On May 31, 1978, upon receiving a nurse's telephone message at his office inquiring when he would see the patient, respondent went to the hospital. There, he examined the patient, studied her chart, and questioned the charge nurse and other nurses regarding all details of the patient's condition and care during the preceding three days. Then, while seated at the nurses' station in CCU and in the immediate presence of the CCU charge nurse and others, respondent charted physician's progress notes dated May 28, 1978, May 29, 1978, May 30, 1978, and May 31, 1978. Respondent made no attempt to conceal his actions; he characterizes his charting of progress notes for three days on which the patient was not seen as an attempt to reconstruct or complete the records so that they would speak for themselves as to the progress of the patient's hospital stay.

IV

Respondent had had something of a running battle with the hospital's nursing staff for some time. He admitted more patients to the hospital than any other physician with privileges there. Because his practice was made up to a great extent of convalescent hospital patients, the patients he admitted to the hospital were often helpless, unable to care for themselves at all, and in need of almost one-to-one care. Respondent had repeatedly complained that his patients were not receiving proper and adequate nursing care; he relates that even nursing supervisors displayed bias by referring to his patients as "Lilly's dillies." For their part, the nursing staff often complained that respondent made inconsistent patient visits or inconsistently documented his visits, and that he was difficult to reach when he was needed. Evidently as a result of the nurses' complaints, respondent was on some kind of hospital probation for a time for deficient record keeping.

V

The evidence considered as a whole did not establish dishonesty or fraudulent intent on the part of respondent. From all of the circumstances, however, the conclusion appears inevitable--and it is found by clear and convincing evidence to a reasonable certainty--that respondent charted the progress notes as he did at least partly in order to make the chart appear unremarkable and thus to avoid possible criticism and embarrassment for his failure to visit the patient for three days. That action constitutes the knowing making and signing of a medical document which falsely represents the existence or nonexistence of a state of facts.

VI

Respondent has been a physician since 1943. After service in the U.S. Navy during World War II, he completed his surgical residency, and he became a Diplomate of the American Board of Surgery in 1951. He then practiced surgery with his father in Kansas City, Missouri, for many years. In 1971, he relocated to California. Because he had considerable experience with geriatric patients, and because he was willing to see patients in nursing homes, admit them to the hospital for surgery, and follow them up at home, he developed a very busy practice comprised of convalescent hospital patients, private office patients, and acute hospital care patients. He has a good reputation among his medical peers for honesty and integrity, and for rendering conscientious care to his patients.

VII

Upon review of the entire record herein, respondent's violation does not merit, and the public interest does not

require, imposition of severe discipline or a lengthy period of probation. It does not appear appropriate that the resources of the Division of Medical Quality be expended on close supervision of this physician. Imposition of some discipline is required however, in that the Board of Medical Quality Assurance must not appear to condone the making of any inaccurate or misleading entries in a medical document.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists for the suspension or revocation of respondent's license pursuant to sections 2220 and 2234 (formerly 2360 and 2361) of the Business and Professions Code for violation of section 2261 (formerly 2411) of said Code.

II

It was not established that respondent violated section 2234(e) (formerly 2361(e)) of the Business and Professions Code.

III

It was not established that respondent violated section 2262 (formerly 2428.5) of the Business and Professions Code.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certificate No. C 12769 issued to respondent Terry E. Lilly, Jr., M.D., is suspended for thirty (30) days; however, the suspension is stayed and respondent is placed on probation for one (1) year upon the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

3. Respondent shall comply with the Division's probation surveillance program.

4. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

5. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

6. Upon successful completion of probation, respondent's certificate will be fully restored.

7. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on November 15, 16, 17, and 18, 1982, at Westminster, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance.

DATED: 12-14-82


W. F. BYRNES
Administrative Law Judge
Office of Administrative Hearings

WFB:bbt

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Attorneys for Complainant

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| TERRY E. LILLY, JR., M.D. |) | |
| 4902 Irvine Center Drive |) | |
| Irvine, California 92714 |) | ACCUSATION |
| |) | |
| Physician's and Surgeon's |) | |
| Certificate No. C 12769 |) | |
| |) | |
| Respondent. |) | |

Complainant, Robert G. Rowland, alleges that:

1. He is the Executive Officer of the Board of Medical Quality Assurance of the State of California (hereinafter the "Board") and brings this Accusation solely in his official capacity.

2. On or about May 25, 1950, respondent Terry E. Lilly, Jr., M.D. (hereinafter "respondent") was issued Physician's and Surgeon's Certificate No. C 12769 by the Board. Said certificate is currently, and was at all times mentioned herein, in full force and effect.

1 3. Pursuant to sections 2220 and 2234 of the Business
2 and Professions Code^{1/} (formerly §§2360 and 2361), the Division
3 of Medical Quality of the Board may take disciplinary action
4 against a licensee who has been guilty of unprofessional conduct.

5 4. Section 2234, subdivision (a) (formerly §2361(a)
6 provides that unprofessional conduct includes violating any
7 provision of the Medical Practice Act (§§2000 et seq.).

8 5. Section 2234, subdivision (e) (formerly §2361(e))
9 provides that unprofessional conduct includes the commission of
10 any act involving dishonesty which is substantially related to
11 the qualifications, functions, or duties of a physician and
12 surgeon.

13 6. Section 2261 (formerly §2411) provides that
14 knowingly making or signing any document related to the practice
15 of medicine which falsely represents the existence or non-
16 existence of a state of facts, constitutes unprofessional
17 conduct.

18 7. Section 2262 (formerly §2428.5) provides that
19 altering or modifying the medical record of any person, with
20 fraudulent intent, or creating any false medical record, with
21 fraudulent intent, constitutes unprofessional conduct.

22 8. Respondent is subject to disciplinary action
23 pursuant to section 2234, subdivisions (a) and (e), in that
24 respondent has committed an act involving dishonesty in the
25 course of his practice as a physician, as more particularly

26 1. Statutory references herein to "section" are to the
27 indicated section of the California Business & Professions Code.

1 alleged hereinafter:

2 A. Respondent altered the Mercy General Hospital,
3 Santa Ana, medical records of the patient D. B.,
4 a patient of respondent, in that:

5 (1) Respondent did not see this patient on
6 May 28, 1978; May 29, 1978; and May 30, 1978.

7 (2) On May 31, 1978, respondent saw the
8 patient and prepared progress record notes as part
9 of the patient's medical record. Respondent
10 properly recorded his notes as to his observations
11 on May 31, 1978.

12 (3) On May 31, 1978, respondent also prepared
13 progress notes on the patient, dating them May 28,
14 1978; May 29, 1978; and May 30, 1978. These notes
15 were inserted into the patient's medical record and
16 purported to set forth observations by respondent of
17 the patient's condition on the dates of May 28, 29,
18 and 30. These notes implied that the respondent had
19 seen the patient on such dates, when, in fact, the
20 respondent had not observed the patient on such dates.

21 9. Respondent is further subject to disciplinary
22 action pursuant to section 2234, in that respondent has violated
23 section 2261, as more particularly alleged hereinafter:

24 A. Complainant realleges paragraph 8, supra,
25 in its entirety, at this point and incorporates it herein
26 by such reference.

27 /

1 10. Respondent is further subject to disciplinary
2 action pursuant to section 2234, in that respondent has
3 violated section 2262, as more particularly alleged hereinafter:

4 A. Complainant realleges paragraph 8, supra,
5 in its entirety, at this point and incorporates it herein
6 by such reference.

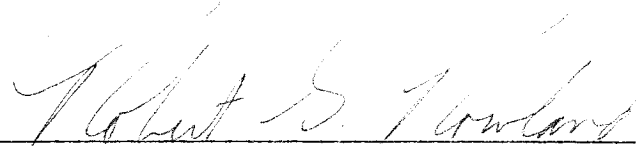
7 B. Respondent had knowledge of the falsity of
8 the representations that he had seen this patient on
9 May 28, 1978; May 29, 1978; and May 30, 1978; and
10 respondent intended that others should rely upon said
11 representations.

12 WHEREFORE, Complainant prays that the Division of
13 Medical Quality of the Board of Medical Quality Assurance hold
14 a hearing on the matters alleged herein and following said
15 hearing, issue an order:

16 1. Suspending or revoking respondent's physician's
17 and surgeon's certificate; and

18 2. Taking such other and further action as the
19 Division of Medical Quality deems appropriate.

20 DATED: May 28, 1981

21
22
23 
24 Robert G. Rowland
25 Executive Director

26 Complainant
27